

SENATE BILL No. 271

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15-2-3.8; IC 9-16.5.

Synopsis: Commercial driver's license violations. Establishes the commercial motor vehicle violations agency and the commercial motor vehicle violations board to adjudicate alleged violations of commercial motor vehicle laws that occur after June 30, 2009. Provides that the board has original jurisdiction of all such alleged violations. Requires the board to waive its jurisdiction to the courts if the alleged violation is a felony or if the respondent demands a jury trial. Establishes the commercial motor vehicle violations fund for the deposit of all monetary penalties collected under the statute. Provides that money in the fund is dedicated to funding operation of the agency and board and as otherwise provided by law. Establishes interim transitional provisions.

Effective: July 1, 2008.

Wyss, Broden, Skinner

January 10, 2008, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 271

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-2-3.8, AS AMENDED BY P.L.1-2007,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 3.8. "State service" means public service by **any**
4 **of the following:**

5 (1) Employees and officers, including the incumbent directors, of
6 the county offices of family and children. ~~and~~

7 (2) Employees and officers, except members of boards and
8 commissions or individuals hired for or appointed to, after June
9 30, 1982, positions as appointing authorities, deputies, assistants
10 reporting to appointing authorities, or supervisors of major units
11 within state agencies, irrespective of the title carried by those
12 positions, of the division of disability and rehabilitative services,
13 division of aging, Fort Wayne State Developmental Center,
14 division of mental health and addiction, Larue D. Carter
15 Memorial Hospital, Evansville State Psychiatric Treatment Center
16 for Children, Evansville State Hospital, Logansport State
17 Hospital, Madison State Hospital, Richmond State Hospital, state



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department of health, Indiana School for the Blind and Visually Impaired, Indiana School for the Deaf, Indiana Veterans' Home, Indiana Soldiers' and Sailors' Children's Home, Silvercrest Children's Development Center, department of correction, Westville Correctional Facility, Plainfield Juvenile Correctional Facility, Putnamville Correctional Facility, Indianapolis Juvenile Correctional Facility, Indiana State Prison, Indiana Women's Prison, Pendleton Correctional Facility, Reception and Diagnostic Center, Rockville Correctional Facility, Youth Rehabilitation Facility, Plainfield Correctional Facility, department of homeland security (excluding a county emergency management organization and any other local emergency management organization created under IC 10-14-3), civil rights commission, criminal justice planning agency, department of workforce development, Indiana historical bureau, Indiana state library, division of family resources, department of child services, Indiana state board of animal health, Federal Surplus Property Warehouse, Indiana education employment relations board, department of labor, Indiana protection and advocacy services commission, commission on public records, Indiana horse racing commission, **commercial motor vehicle violations agency**, and state personnel department.

SECTION 2. IC 9-16.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

ARTICLE 16.5. COMMERCIAL MOTOR VEHICLE VIOLATIONS AGENCY

Chapter 1. Application of Article

Sec. 1. This article applies to the adjudication of a violation of commercial motor vehicle laws that occurs after June 30, 2009.

Sec. 2. This article applies to the following:

(1) A driver.

(2) Any other person subject to commercial motor vehicle laws.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agency" refers to the commercial motor vehicle violations agency established by IC 9-16.5-3-1.

Sec. 3. "Board" refers to the commercial motor vehicle violations board established by IC 9-16.5-4-1.

Sec. 4. "Chair" refers to the chair of the board appointed under

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1 IC 9-16.5-4-5.

2 Sec. 5. "Commercial motor vehicle law" refers to a provision of
3 this title, other Indiana law, or federal motor carrier safety laws:

- 4 (1) applicable to a driver; or
5 (2) regulating the operation of a commercial motor vehicle.

6 Sec. 6. "Driver" refers to an individual who has, or is required
7 to have, a commercial driver's license under the commercial motor
8 vehicle laws.

9 Sec. 7. "Fund" refers to the commercial motor vehicle violations
10 fund established by IC 9-16.5-6-1.

11 Sec. 8. "Respondent" refers to a person alleged to have violated
12 a commercial motor vehicle law.

13 Sec. 9. "Violation" refers to a violation, or an alleged violation,
14 of a commercial motor vehicle law.

15 **Chapter 3. Commercial Motor Vehicle Violations Agency**

16 Sec. 1. The commercial motor vehicle violations agency is
17 established.

18 Sec. 2. The agency:

- 19 (1) consists of the board and the staff appointed for the agency
20 under this article; and
21 (2) is an agency of the executive department of the state.

22 Sec. 3. The agency shall administer this article.

23 Sec. 4. The board, through the chair, shall do the following:

- 24 (1) Administer the agency.
25 (2) Employ staff for the agency.
26 (3) Prescribe and maintain a recommended schedule of civil
27 penalties for violations consistent with commercial motor
28 vehicle laws.
29 (4) Provide for a mechanism for efficient disposition of
30 admitted violations.
31 (5) Provide for a diversion program consistent with
32 commercial motor vehicle laws that is designed to:
33 (A) address the nature of violations; and
34 (B) correct violations.

35 Sec. 5. IC 4-15-2 applies to the appointment of the agency's staff.

36 **Chapter 4. Commercial Motor Vehicle Violations Board**

37 Sec. 1. The commercial motor vehicle violations board is
38 established.

39 Sec. 2. (a) The board consists of seven (7) individuals appointed
40 by the governor.

41 (b) An individual appointed to the board must be an attorney
42 admitted to the practice of law before the Indiana supreme court.

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(c) Not more than four (4) members of the board may be members of the same political party.

Sec. 3. (a) The term of an individual appointed to the board begins on the later of the following:

(1) The day the term of the member whom the individual is appointed to succeed expires.

(2) The day the individual accepts appointment to the board.

(b) The term of a board member expires on July 1 of the fourth year after the expiration of the term of the member's immediate predecessor.

(c) An individual may be reappointed to the board for a new term. An individual reappointed to the board is the individual's own:

(1) successor for purposes of subsection (a); and

(2) immediate predecessor for purposes of subsection (b).

(d) A board member may be removed at any time by the governor for cause.

Sec. 4. (a) If a vacancy occurs on the board, the governor shall appoint a qualified individual to fill the vacancy.

(b) An individual appointed to fill a vacancy serves the remainder of the term of the board member the individual is appointed to succeed.

Sec. 5. (a) The governor shall appoint a board member to be the chair. The governor may appoint a board member to be the chair at any time.

(b) The board member serving as the chair serves until the earlier of the following:

(1) The board member's term expires.

(2) The governor appoints a new chair.

Sec. 6. (a) Four (4) members of the board constitute a quorum.

(b) The board may take official action only by the affirmative vote of at least four (4) board members.

Sec. 7. The board may adopt rules under IC 4-22-2 to do the following:

(1) Establish procedural rules for adjudication of commercial motor vehicle violations.

(2) Provide for the administration of this article.

Chapter 5. Violations of Commercial Motor Vehicle Law; Jurisdiction and Procedures

Sec. 1. The board has original jurisdiction over all violations of commercial motor vehicle law.

Sec. 2. (a) The board shall establish six (6) geographic districts

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for Indiana.

(b) The board's procedural rules shall provide for a hearing relating to a violation alleged to have occurred in a district to be held in the district and, to the extent possible, in the county in which the violation is alleged to have occurred.

Sec. 3. (a) Except as provided in subsection (d), the board shall assign each board member to one (1) of the districts.

(b) Subject to subsection (c) and section 4 of this chapter, the board member assigned to a district has original jurisdiction of violations alleged to have occurred within the district.

(c) Subject to the board's rules, a violation alleged to have occurred in a district may be:

- (1) reassigned to another board member; or
- (2) heard by the entire board.

(d) The board shall not assign the chair to a particular district. However:

- (1) the chair, in the chair's discretion, may hear cases to balance caseloads, under subsection (c)(1), or for other purposes; and
- (2) the chair has all the powers of other board members to hear matters as a board member.

Sec. 4. (a) A violation must be:

- (1) filed as "State of Indiana v. (name of the respondent)";
- (2) filed at the agency's office; and
- (3) assigned to a board member or the entire board as provided in the board's rules.

(b) If a matter is contested, the prosecuting attorney of the county in which the violation is alleged to have occurred shall represent the state.

(c) The Indiana Rules of Trial Procedure and the board's rules apply in a hearing before a board member or the entire board.

Sec. 5. (a) The chair may waive the board's jurisdiction over a violation to the circuit or superior court of the county in which the violation is alleged to have occurred.

(b) A waiver of jurisdiction under this section must be in writing and state the reasons for the waiver.

(c) A waiver of jurisdiction under this section revokes the commercial driver's license of a respondent until reinstated by the board.

(d) All commercial motor vehicle laws continue to apply to a matter waived under this section.

Sec. 6. (a) The chair shall waive the board's jurisdiction under

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section 5 of this chapter if either of the following apply:

(1) The violation is a felony.

(2) The respondent demands a jury trial.

(b) If the respondent does not demand a jury trial under subsection (a), the alleged violation shall be heard by the board.

Sec. 7. (a) Unless the entire board hears a matter originally, an appeal of a member's decision in a matter under this chapter shall be:

(1) to the entire board, sitting en banc; and

(2) based on the record and evidence before the board member and not de novo.

(b) The chair must sign the decision of the board on an appeal.

(c) A decision of the entire board is considered the final decision of the board. If a respondent does not appeal the original decision of a board member, the board member's decision is considered the final decision of the entire board.

(d) A respondent or the state may appeal a final decision of the board to the Indiana court of appeals.

Sec. 8. The record of a final decision of the board:

(1) is a public record; and

(2) shall be sent to:

(A) the bureau;

(B) the department of revenue, motor carrier services division; and

(C) any federal agency requesting a copy of the final decision.

Chapter 6. Commercial Motor Vehicle Violations Fund

Sec. 1. The commercial motor vehicle violations fund is established.

Sec. 2. (a) The agency shall administer the fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 3. The fund consists of all monetary penalties imposed under this article for a violation that is not waived under IC 9-16.5-5.

Sec. 4. Money in the fund shall be used to administer this article

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and as otherwise provided by law.

SECTION 3. [EFFECTIVE JULY 1, 2008] (a) The definitions in IC 9-16.5-2, as added by this act, apply throughout this SECTION.

(b) The governor shall make the initial appointments to the board not later than January 1, 2009.

(c) The term of an individual appointed to the board under this SECTION begins on the later of the following:

(1) January 1, 2009.

(2) The day the individual accepts appointment to the board.

(d) Notwithstanding IC 9-16.5-4-3(b), as added by this act, the terms of board members expire as follows:

(1) The terms of two (2) board members expire January 1, 2013.

(2) The terms of two (2) board members expire January 1, 2012.

(3) The terms of two (2) board members expire January 1, 2011.

(4) The term of one (1) board member expires January 1, 2010.

When making an initial appointment, the governor shall designate the expiration date of the term of the member appointed.

(e) This SECTION expires January 1, 2014.

SECTION 4. [EFFECTIVE JULY 1, 2008] (a) The definitions in IC 9-16.5-2, as added by this act, apply throughout this SECTION.

(b) Notwithstanding IC 9-16.5-4-7, as added by this act, the board may do the following under interim written guidelines approved by the board:

(1) Establish procedural rules for adjudication of commercial motor vehicle violations.

(2) Provide for the administration of IC 9-16.5, as added by this act.

(c) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 9-16.5-4-7, as added by this act.

(2) January 1, 2011.

SECTION 5. [EFFECTIVE JULY 1, 2008] (a) The legislative services agency shall prepare legislation for introduction in the 2009 regular session of the general assembly to make appropriate corrections and changes in statutes affected by this act.

(b) This SECTION expires July 1, 2009.

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